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FUJITSU LIMITED, and

FUJITSU MICROELECTRONICS AMERICA, INC.

FILED

DISTRICT COURT OF GUAM

APR 25 2007 *mba*

MARY L.M. MORAN
CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF GUAM

NANYA TECHNOLOGY CORP. and
NANYA TECHNOLOGY CORP. U.S.A.,

Plaintiff,

vs.

FUJITSU LIMITED, FUJITSU
MICROELECTRONICS AMERICA, INC.,

Defendants.

CIVIL CASE NO. 06-CV-00025

**CERTIFICATE OF DANIEL M.
BENJAMIN IN SUPPORT OF
DEFENDANTS' EX PARTE
APPLICATION UNDER L.R. 7.1(j)&(k)
TO OBTAIN A MAY 2007 HEARING
DATE ON DEFENDANTS' MOTION
TO IMMEDIATELY TRANSFER FOR
CONVENIENCE**

1 I, Daniel M. Benjamin, declare and certify pursuant to L.R. 17.1(k):

2 1. I am an attorney at Calvo & Clark, LLP, local counsel of record for Defendants
3 Fujitsu Limited and Fujitsu Microelectronics America, Inc. in this matter. I make this declaration
4 on personal knowledge, and if called as a witness, I could and would testify thereto.

5 2. Defendants are applying *ex parte* to request that the Court, if possible, hear their
6 motion to immediately transfer this action (*see* Docket No. 192) on the earliest available date in
7 May 2007. Should no such date be available, Defendants alternatively respectfully request that
8 the Court hear the motion no later than June 22, 2007 at the already scheduled hearings on their
9 motions to dismiss or, in the alternative, to transfer (*see* Docket Nos. 74 & 89).

10 3. The reason for this *ex parte* request for a hearing in May is that Defendants have
11 been unable to secure a prompt hearing date on their Motion to Immediately Transfer. When
12 Defendants first sought to meet and confer with Plaintiffs regarding the present motion, Plaintiffs
13 stated they would only agree to a prompt hearing if Defendants executed a very lengthy, very
14 substantive “stipulation” of fact. Defendants attempted to negotiate with Plaintiffs in good faith,
15 but the negotiation consumed at least two weeks without resolution – by which time my office,
16 upon inquiring as to available dates with the Clerk’s office, was told that all available hearing
17 dates before the Court in May had disappeared, and that the first available hearing date was July
18 12, 2007.

19 4. Having the transfer issue resolved first will likely be of great benefit the Court and
20 the parties because it creates a potentially significant savings in resources for all. Presently, the
21 parties have become embroiled in time consuming and costly “jurisdictional” discovery. This has
22 already seen Plaintiffs serve over three hundred “jurisdictional” document requests to each
23 Defendant, 77 interrogatories to each Defendant and 27 requests for admission to each Defendant;
24 take one depositions with three more scheduled; serve at least seven third party subpoenas; and

1 file three motions to compel, all in an effort to find some basis for personal jurisdiction over the
2 Defendants in this case. Meanwhile, Plaintiffs have improperly refused to provide *any*
3 substantive responses to Defendants' requests seeking Plaintiffs' basis for asserting personal
4 jurisdiction in the first instance. A true and correct copy of these responses are attached hereto as
5 Exhibit "A." Defendants accordingly will be initiating a meet and confer that could lead to
6 further motion practice if a resolution is not reached.

7 5. All of this jurisdictional discovery could be mooted out if the transfer issue is
8 heard first (assuming, of course, that the Court determines to exercise its discretion to transfer).
9 Moreover, the Court and parties also could save substantial time with regard to the further
10 briefing and upcoming argument on the jurisdictional issues. Notably, Plaintiffs already
11 extensively litigated the convenience issues when they brought their own motion to transfer in
12 California. A true and correct copy of Plaintiffs' briefs from the California action are attached
13 hereto as Exhibit "B."

14 6. In compliance with Local Rules 7.1(j)&(k), I note that Plaintiffs in this action are
15 represented by two local attorneys and several attorneys who are admitted pro hac vice. Their
16 addresses are as follows:

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16 7. On April 23, 2007, following the hearing before the Court, I informed Plaintiffs'
17 counsel Joseph Razzano of our intent to bring this application unless an agreement could be
18 reached. Mr. Razzano responded that Plaintiffs would oppose the *ex parte* request, wished to be
19 served with any papers regarding it, and to be heard should there be a hearing thereon.

20 8. I will cause this *ex parte* application to be served on Plaintiffs' local counsel with
21 the accompanying papers immediately after its filing.

22 I declare under penalty of perjury pursuant to the laws of the United States and of the
23 Territory of Guam that the foregoing declaration is true and correct.

24 Executed this 25th day of April, 2007 in Tamuning, Guam.

25 
26 DANIEL M. BENJAMIN